

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

SEA STAR LINE CARIBBEAN, LLC,

Libelant,

v.

M/V SUNSHINE SPIRIT,

Libelee in rem.

Civil No. 09-1152 (JAF)

RADIANCE SHIPPING LINE, LLC,

Third-Party Plaintiff,

v.

SEA STAR LINE CARIBBEAN, LLC,

Third-Party Defendant.

OPINION AND ORDER

Libelant, Sea Star Line Caribbean, LLC, institutes libel in admiralty against Libelee, M/V Sunshine Spirit (the "vessel"). (Docket No. 1.) Claimant Radiance Shipping Line, LLC, the vessel's owner, brings an action against Libelant, alleging wrongful arrest, unjust enrichment, and breach of charter party. (Docket No. 19.)

Libelant moves to dismiss Claimant's complaint under Federal Rule of Civil Procedure 12(b)(1) (Docket No. 79); Claimant opposes (Docket No. 82); and Libelant replies (Docket No. 87). Claimant moves to transfer this case to the Middle District of Florida (Docket

Civil No. 09-1152 (JAF)

-2-

1 Nos. 82; 83); Libelant opposes (Docket No. 91); and Claimant replies
2 (Docket No. 92). Claimant also moves for summary judgment under Rule
3 56(c) (Docket Nos. 60; 95); Libelant opposes (Docket No. 103); and
4 Claimant replies (Docket No. 109).

5 Libelant moves to strike Claimant's affidavits submitted in
6 support of its motion for summary judgment (Docket No. 100), and
7 Claimant opposes (Docket No. 102). Libelant further moves to deem
8 certain statements admitted under Rule 36(a)(6) (Docket No. 101), and
9 Claimant opposes (Docket No. 111).

10 I.

11 **Factual and Procedural Synopsis**

12 We derive the following facts from the parties' pleadings,
13 briefs, statements of uncontested material facts, and exhibits, and
14 Libelant's motion in compliance. (Docket Nos. 1; 19; 26; 60; 95; 96;
15 100; 101; 102; 103; 107; 111.)

16 Libelant is an international common ocean carrier engaged in the
17 container shipping business throughout the Caribbean and has a
18 principal place of business in Jacksonville, Florida. Claimant is a
19 Florida corporation that owns the vessel in dispute. Interline
20 Connection, N.V. ("Interline") is incorporated under the laws of the
21 Netherlands Antilles and is engaged in the carriage of goods by sea.

22 On July 6, 2007, Interline and Libelant formed a confidential
23 sub-charter agreement, under which Interline furnished the vessel for
24 Libelant's use between the ports of St. Maarten, Saint Kitts,

Civil No. 09-1152 (JAF)

-3-

1 Antigua, Tortola, and San Juan, Puerto Rico.¹ (Docket No. 107-3.)
2 Interline undertook to ensure that the vessel would be berthed at
3 Libelant's terminal at Puerto Nuevo, Puerto Rico, each Friday at
4 10:00 am for loading of cargo. Interline retained control over the
5 vessel under this time charter, which commenced on July 27, 2007, and
6 concluded on January 22, 2008.

7 On December 12, 2007, Claimant and Interline formed a bareboat
8 charter party (the "charter") in St. Maarten under the laws of the
9 Netherlands West Indies. (Docket No. 102-2.) This demise charter
10 tendered full use and control of the vessel to Interline as
11 charterer. The duration of the charter was for forty-eight months
12 and, under Clause 31, title ownership of the vessel would transfer to
13 Interline at the end of the period. In other words, the parties
14 designed the charter hire as a conditional sale of the vessel.
15 Furthermore, Clause 15 of the charter obliged Interline to prevent
16 all liens from attaching to the vessel and to indemnify Claimant if
17 Interline breaches this clause.

18 On February 8, 2008, Libelant and Interline concluded a sales
19 agency agreement whereby Interline became the sales agent for
20 Libelant in the eastern Caribbean Sea. (Docket No. 107-2.) Under this
21 sales agency, Interline undertook to solicit and promote Libelant's
22 cargo transport services exclusively for five years, commencing on

¹ The record is silent as to Interline's authority to form a sub-charter for the vessel in July 2007.

Civil No. 09-1152 (JAF)

-4-

1 February 15, 2008. The sales agency continues in force to this day.
2 (Docket No. 95-3 at 116.)

3 Libelant and Interline drafted a memorandum of understanding
4 relating to their operations over the entire eastern Caribbean region
5 that was meant to become effective on February 1, 2008. (Docket
6 No. 107-4.) Under this agreement, Interline was "to integrate, in its
7 entirety his [sic] weekly San Juan, Puerto Rico service . . . over to
8 [Libelant]." This agreement also contemplated Libelant's use of the
9 vessel under a two-year time charter and Libelant's provision for the
10 vessel's maintenance and repair. Libelant insists that it and
11 Interline never executed this agreement. (Docket No. 107-1.)

12 However, during his deposition of September 2, 2009, Neal
13 Perlmutter, Libelant's chief financial officer, testified that the
14 agreement became effective at some time around February 1, 2008.
15 (Docket No. 95-3 at 27, 45-47, 54-55.) Under this arrangement,
16 Libelant took over Interline's inter-island services in the eastern
17 Caribbean. (Id. at 30.) The vessel was to be the sole ship for their
18 combined services. (Id. at 90.) Perlmutter testified that Libelant
19 and Interline contemplated a formal sharing of equity ownership in
20 the vessel, one-half to each party. (Id. at 65-66.) Furthermore,
21 the two companies engaged in discussions around April 2008 over the
22 anticipated sharing of profits from their operation of the vessel.
23 (Id. at 90-91.)

Civil No. 09-1152 (JAF)

-5-

1 Responding to an inquiry from Claimant, Ellen Ehrenkranz
2 confirmed on October 18, 2008, that Libelant had reviewed the charter
3 between Claimant and Interline. (Docket No. 60-6.) According to
4 Perlmutter, Ehrenkranz is the sister of Mark Swerdel, the managing
5 director of Interline. (Docket No. 95-3 at 34-35.) She worked as
6 a ship broker and accountant for Interline.

7 On June 12, 2008, Interline and Claimant agreed to a
8 modification of their charter, under which Interline assigned all
9 rights as charterer to Inter-Island Maritime, Ltd., but retained all
10 obligations under the charter. (Docket No. 102-2.) According to
11 Perlmutter, Libelant held a meeting with Interline in late 2008,
12 during which Libelant became aware that Claimant had not been paid
13 charter hire under the charter. (Docket No. 95-3 at 108.)

14 On February 18, 2009, Libelant filed libel in this court.
15 (Docket No. 1.) In support of its claim for liens against the vessel,
16 Libelant appended a table of services rendered for the benefit of the
17 vessel, dating from March to December 2008. (Docket No. 1-2.)

18 On March 11, Claimant included a complaint against Libelant in
19 its answer to the libel. (Docket No. 19.) On July 7, Claimant moved
20 for partial summary judgment on its claims. (Docket No. 60.) On
21 August 19, Libelant moved to dismiss Claimant's complaint (Docket
22 No. 79); Claimant opposed on September 7 (Docket No. 82); and
23 Libelant replied on September 16 (Docket No. 87). On September 7,
24 Claimant moved to transfer venue (Docket Nos. 82; 83); Libelant

Civil No. 09-1152 (JAF)

-6-

1 opposed on September 24 (Docket No. 91); and Claimant replied on
2 October 6 (Docket No. 92). On October 16, Claimant renewed its motion
3 and moved for summary judgment on all claims and counterclaims
4 (Docket No. 95); Libelant opposed on November 2 (Docket No. 103); and
5 Claimant replied on November 12 (Docket No. 109). On November 9, we
6 ordered Libelant to produce all of its contracts relating to the
7 vessel and its agency relationship with Interline (Docket No. 106);
8 Libelant complied the next day (Docket No. 107).

9 On October 29, Libelant moved to strike two affidavits
10 supporting Claimant's motion for summary judgment (Docket No. 100),
11 and Claimant opposed the following day (Docket No. 102). On
12 October 30, Libelant moved to deem certain statements admitted
13 (Docket No. 101), and Claimant opposed on November 12 (Docket
14 No. 111).

15 II.

16 Analysis

17 A. Motion to Dismiss

18 Libelant moves for dismissal on the grounds that Claimant has
19 failed to sufficiently plead a basis for our subject-matter
20 jurisdiction over Claimant's claims. (Docket No. 79.) Libelant argues
21 that we lack the competence to hear Claimant's claims in admiralty
22 because Claimant filed its complaint as a counterclaim when Libelant
23 had merely brought libel against the vessel in rem. (Id.)

Civil No. 09-1152 (JAF)

-7-

1 Under Federal Rule of Civil Procedure 12(b)(1), a movant may
2 challenge the sufficiency of the plaintiff's averments in support of
3 the court's subject-matter jurisdiction. Valentín v. Hosp. Bella
4 Vista, 254 F.3d 358, 363 (1st Cir. 2001). The court takes the
5 plaintiff's "jurisdictionally-significant facts as true" and
6 "assess[es] whether the plaintiff has propounded an adequate basis
7 for subject-matter jurisdiction." Id.; see Torres-Negrón v. J & N
8 Records, LLC, 504 F.3d 151, 162-63 (1st Cir. 2007). The party
9 asserting jurisdiction bears the burden of showing its existence.
10 See Skwira v. United States, 344 F.3d 64, 71 (1st Cir. 2003).

11 Libelant commenced this case in admiralty to enforce its
12 putative liens against the vessel in rem. (Docket No. 1.) Rule
13 14(c)(1) permits claimants in admiralty to implead third-parties who
14 may be liable to claimant. Fed. R. Civ. P. 14(c)(1). While Claimant
15 erroneously called its complaint a counterclaim (Docket No. 19) when
16 Libelant never brought libel against Claimant in personam (Docket
17 No. 1), Rule 14 permits Claimant to bring a third-party complaint,
18 provided that we have jurisdiction over its claims.

19 This court is vested with admiralty jurisdiction by virtue of 28
20 U.S.C. § 1333. Claimant's complaint charges Libelant with wrongful
21 arrest of the vessel, unjust enrichment, and breach of charter party.
22 (Docket No. 19.) Disputes over the performance of charter parties
23 have always been the province of courts in admiralty. United States
24 v. Carr, 49 U.S. 1 (8 How. 1) (1849). Similarly, federal courts in

Civil No. 09-1152 (JAF)

-8-

1 admiralty have always permitted cross-libel for wrongful arrest where
2 the libelant had maliciously prosecuted libel. See, e.g., Frontera
3 Fruit Co. v. Dowling, 91 F.2d 293 (5th Cir. 1937).

4 In arguing against our competence, Libelant cites the Fifth
5 Circuit decision in Incas & Monterey Printing & Packaging, Ltd. v.
6 M/V Sang Jin, 747 F.2d 958 (1984). (Docket No. 79.) This case is
7 inapposite as the issue before the court was the necessity of
8 counter-security under Supplemental Rule E(7), not jurisdiction over
9 the claim for wrongful arrest itself. See id. at 965. We are,
10 therefore, satisfied that we possess maritime jurisdiction over two
11 of three claims in Claimant's complaint.

12 Accordingly, we may also entertain Claimant's claim against
13 Libelant for unjust enrichment arising out of Libelant's alleged
14 failure to recompense Claimant for use of the vessel (Docket No. 19).
15 See 28 U.S.C. § 1367(a). Furthermore, to the extent that the claim
16 resembles indebitatus assumpsit at common law resulting from
17 Libelant's breach of charter party, it is properly within the scope
18 of our admiralty jurisdiction. See Exxon Corp. v. Cent. Gulf Lines,
19 500 U.S. 603, 610 (1991).

20 We qualify our exercise of supplemental jurisdiction, however,
21 by noting that Claimant lacks standing to pursue a remedy in quantum
22 meruit for services rendered by Motor-Services Hugo Stamp, Inc.
23 ("Hugo Stamp") (Docket No. 19). The loss, if any, is not borne by

Civil No. 09-1152 (JAF)

-9-

1 Claimant.² Furthermore, there is no indication of a relationship
2 between Claimant and Hugo Stamp such that Claimant could represent
3 Hugo Stamp in a lawsuit.

4 **B. Motion to Transfer Venue**

5 Claimant moves to transfer this case to the Middle District of
6 Florida pursuant to 28 U.S.C. § 1404(a). (Docket No. 28.) Claimant
7 argues that (1) both Libelant and Claimant maintain a principal place
8 of business in that district; (2) ten of sixteen witnesses are
9 domiciled in the United States proper, five of whom reside in
10 Florida; and (3) that, as the vessel has been sold by judicial decree
11 and remains only as proceeds deposited in the court's registry, there
12 is no substantial connection with this district. (Id.)

13 Under 28 U.S.C. § 1404(a), "[f]or the convenience of the parties
14 and witnesses, in the interest of justice, a district court may
15 transfer any civil action to any other district or division where it
16 might have been brought." We have broad discretion in granting or
17 denying a motion for transfer. See Auto Europe, LLC v. Conn. Indem.
18 Co., 321 F.3d 60, 64 (1st Cir. 2003).

19 While the proceeds relating to this vessel could be easily
20 remitted to the Middle District of Florida, we find compelling
21 reasons to retain this case for the convenience of the parties.
22 First, we are moments away from trial and the parties have presumably

² See Lance v. Coffman, 549 U.S. 437, 439 (2007) (noting that standing is necessary for a court's subject-matter jurisdiction).

Civil No. 09-1152 (JAF)

-10-

1 provided for the contingency of litigation in Puerto Rico by this
2 point. Second, this district has already expended considerable
3 resources in this case. We, therefore, decline to transfer venue.

4 **C. Motion for Summary Judgment**

5 Claimant argues that it is entitled to summary judgment on all
6 claims because, inter alia, the charter included a "no-liens clause";
7 Libelant was aware of the prohibition against liens; and Libelant, as
8 co-venturer, could not attach a lien on the vessel. (Docket Nos. 60;
9 95.) We address these contentions with respect to the validity of
10 the vessel's arrest and Claimant's claims for wrongful arrest, breach
11 of charter party, and unjust enrichment.

12 **1. Validity of Arrest**

13 Under the Federal Maritime Lien Act, the owner or master of the
14 vessel, a person entrusted with the vessel's management at the port,
15 or any of their agents, is "presumed to have authority to procure
16 necessities for [the] vessel." 46 U.S.C. § 31341(a). A person who
17 provides such necessities creates a maritime lien against the vessel
18 and may enforce his right as a lien creditor. Id. § 31342(a).

19 However, where the putative lienor is actually aware of a clause
20 in the charter party that prohibits liens, no liens may attach. Gulf
21 Oil Trading Co. v. M/V Caribe March, 757 F.2d 743 (5th Cir. 1985).
22 Furthermore, it remains the rule in admiralty that the owner of the
23 vessel cannot create liens against it. Frontera Fruit, 91 F.2d at
24 296. The charterer under a demise charter party is treated as the

Civil No. 09-1152 (JAF)

-11-

1 vessel's owner pro hac vice. The South Coast, 251 U.S. 519, 523
2 (1920).

3 With respect to co-venturers, common-law principals of agency
4 apply to cases in admiralty. CEH, Inc. v. F/V Seafarer, 70 F.3d 694,
5 704 (1st Cir. 1995); accord Kirno Hill Corp. v. Holt, 618 F.2d 982,
6 985 (2d Cir. 1980). However, we look to Puerto Rico law for the
7 choice-of-law rule to determine the existence of a partnership.
8 Allstate Ins. Co. v. Occidental Int'l, Inc., 140 F.3d 1, 3 (1st Cir.
9 1998). Puerto Rico applies the "dominant or significant contacts"
10 test to find the appropriate rule of decision to resolve contractual
11 relationships. Id.

12 In the case at bar, it is beyond dispute that the charter
13 between Claimant and Interline included a no-liens clause. (Docket
14 No. 102-2.) The pertinent question, then, is whether Libelant was
15 aware of this provision or if it was legally barred from creating
16 liens on account of its ownership pro hac vice.

17 Claimant contends that Interline and Libelant are co-venturers.
18 (Docket No. 95.) Libelant and Interline entered into a series of
19 agreements in 2007 and 2008. The confidential sub-charter emphasized
20 the importance of berthing the vessel at San Juan, Puerto Rico, on a
21 weekly basis for Libelant's operations. (Docket No. 107-3.) Under
22 the sales agency, Interline undertook to promote Libelant's services
23 in the eastern Caribbean. (Docket No. 107-2.) The memorandum of
24 understanding between the companies evinces a clear intent to merge

Civil No. 09-1152 (JAF)

-12-

1 their operations and subsume Interline under Libelant's banner, with
2 the primary base of operations in San Juan, Puerto Rico. (Docket
3 No. 107-4.) Therefore, Libelant and Interline were parties to a
4 business relationship governed by Puerto Rico law. See Allstate Ins.
5 Co., 140 F.3d at 3.

6 The Civil Code of Puerto Rico recognizes general partnerships,
7 which "may consist of all the present property or of the profits."
8 31 L.P.R.A. §§ 4317-4318 (1990). A partner acting under express or
9 implied authority may incur obligations on behalf of the partnership.
10 Id. § 4371.

11 In his deposition testimony, Perlmutter emphasized the
12 collaboration between Libelant and Interline in operating the vessel
13 for their combined eastern Caribbean services. (Docket No. 95-3.)
14 The parties contemplated equal shares in the vessel and division of
15 profits from operation of the vessel. Perlmutter affirmed that the
16 vessel was essential to the purpose of their joint venture. Taken
17 together, the memorandum of understanding, sales agency agreement,
18 and Perlmutter's testimony demonstrate that, as of February 2008,
19 Libelant and Interline had formed a general partnership as implied in
20 Puerto Rico law.

21 In her role as accountant for Interline, Ehrenkranz' statements
22 by e-mail are attributable to Interline as her principal. See Fed.
23 R. Evid. 801(d)(2). Because Interline and Libelant are general
24 partners, Interline's awareness of the no-liens clause is imputed to

Civil No. 09-1152 (JAF)

-13-

1 Libelant under the rules of agency. See id.; Restatement (Third) of
2 Agency § 5.04 (2006). Accordingly, we find that Libelant was aware
3 of the no-liens clause by February 2008.

4 Moreover, Libelant could not have created liens against the
5 vessel as its charterer. Although Interline and Claimant formed their
6 charter on December 12, 2007 (Docket No. 102-2), prior to the
7 formation of the general partnership in February 2008, Interline's
8 demise charter became a joint asset of the partnership. Thus,
9 Libelant became part owner pro hac vice of the vessel. See The South
10 Coast, 251 U.S. at 523. It follows that Libelant could not have
11 created valid liens after the formation of the partnership. See
12 Frontera Fruit, 91 F.2d at 296. All of the charges that Libelant
13 asserted in its libel post-dated the creation of this partnership.
14 (Docket No. 1-2.) Therefore, Libelant had no legal basis to prosecute
15 libel and arrest the vessel.

16 **2. Wrongful Arrest**

17 To recover damages for wrongful arrest, Claimant must
18 demonstrate "bad faith, malice, or such negligence as would
19 constitute bad faith" on Libelant's part in prosecuting libel.
20 Frontera Fruit, 91 F.2d at 294. For the same reasons that we find no
21 legal basis for Libelant's arrest of the vessel, we also find that
22 Libelant acted with malice or gross negligence in instituting this
23 case. Libelant is charged with implied actual knowledge of the no-
24 liens clause, and it is a sophisticated business entity engaged in

Civil No. 09-1152 (JAF)

-14-

1 the trade of carriage of goods by sea. Furthermore, the patent
2 incongruity between Perlmutter's admission that Libelant and
3 Interline had concluded their memorandum of understanding (Docket
4 No. 95-3) and Libelant's argument in opposition to summary judgment
5 (Docket No. 107-1) hints at bad faith. We, therefore, find Libelant
6 culpable of wrongful arrest as a matter of law.

7 **3. Breach of Charter Party**

8 Furthermore, we find Libelant liable for breach of the charter
9 party as a matter of law. Interline's rights and obligations under
10 the charter became part of its partnership with Libelant. See 31
11 L.P.R.A. § 4318. Moreover, Interline retained its obligations under
12 the charter, even though it assigned the rights to another entity in
13 June 2008. (Docket No. 102-2.) Accordingly, Interline's breach of
14 the charter by permitting the attachment of liens is imputed to
15 Libelant as a general partner. See 31 L.P.R.A. § 4371.

16 **4. Unjust Enrichment**

17 Finally, because Libelant has breached the charter party, it may
18 be held to account for debts owed under the charter. See Exxon
19 Corp., 500 U.S. at 610. Moreover, Libelant has admitted its awareness
20 that Claimant was owed charter hire under the charter. (Docket
21 No. 95-3.) Furthermore, to the extent that Libelant used the vessel
22 for some period of time not covered by the demise charter, it must be
23 liable to Claimant in quantum meruit. Therefore, Claimant is entitled
24 to summary judgment on its claim for unjust enrichment.

Civil No. 09-1152 (JAF)

-15-

1 **D. Evidentiary Motions**

2 We need not consider Libelant's motion to strike because we have
3 not relied on the deposition testimonies of Swerdel or John Ludwig.
4 (See Docket No. 100.) Furthermore, as we find that Libelant could
5 not have created valid liens against the vessel, we need not address
6 Libelant's motion to deem admissions. (See Docket No. 101.)

7 **III.**

8 **Conclusion**

9 In view of the foregoing, we hereby:

10 1) **GRANT IN PART** and **DENY IN PART** Libelant's motion to dismiss
11 (Docket No. 79). We **DISMISS WITH PREJUDICE** Claimant's complaint **only**
12 with respect to the portion of its claim for unjust enrichment that
13 is based upon benefits conferred by **Hugo Stamp** (id.).

14 2) **DENY** Claimant's motion to transfer venue (Docket No. 83).

15 3) **GRANT IN PART** and **DENY IN PART** Claimant's motions for summary
16 judgment (Docket Nos. 60; 95). We **VACATE** the arrest of M/V Sunshine
17 Spirit. **Trial** will proceed on the remaining issue of the extent of
18 Libelant's liability to Claimant.

19 4) **DENY AS MOOT** Libelant's motion to strike affidavits (Docket
20 No. 100) and motion to deem admissions (Docket No. 101).

21 5) **DENY** Claimant's motion to adjourn (Docket No. 110).

22 Parties strongly urged to sit down and settle the case before
23 the November 16 trial.

Civil No. 09-1152 (JAF)

-16-

IT IS SO ORDERED.

San Juan, Puerto Rico, this 13th day of November, 2009.

s/José Antonio Fusté
JOSE ANTONIO FUSTE
Chief U.S. District Judge